IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.1570 OF 1998

Mahadeo Dadoba Jadhav, .. Petitioner
Vs
The Maharashtra State Co-op
Agriculture ... and ors. .. Respondents

Mr H.D.Gole, for the petitioner.
Mr N.R.Patankar, for respondent nos 1 to 3.

ALONG WITH

WRIT PETITION NO.1526 OF 2001

The Maharashtra State Co-op
Agriculture ... and ors. .. Petitioners
Vs
Shri Mahadeo Dadoba Jadhav & Anr. .. Respondents

Mr V.P.Sawant, for the petitioner.
Mr H.D.Gole, for the respondent no.1.

CORAM : V.G.PALSHIKAR, Ag.C.J., &
D.B.BHOSALE,J.

DATE : 21st December, 2005.

ORAL JUDGMENT: (PER D.B.BHOSALE, J.)

1. By consent of the parties, both the writ petitions were heard together and are being disposed of by this common Judgment. Parties in both the writ petitions are common.

2. Heard the learned counsel for the parties.

3. Writ Petition No.1570 of 1998 filed by Mahadeo Dadoba Jadhav is directed against the orders dated 29.5.1997 and 9.2.1998 passed by respondent no.3-Bank.

By letter/order dated 29.5.1997, the sanction accorded by respondent no.3 to correct the petitioner's birth date as 31.12.1942 instead of his original birth date 1.6.1940, was cancelled. It was also mentioned in the letter that respondent no.3 made correspondence in this respect with the head office and on receipt of the directions therefrom the matter of correcting the petitioner's birth date would be reconsidered. By order dated 9.2.1998 the petitioner was informed that the change of his birth date recorded initially in the Bank record cannot be considered.

4. This Court, while admitting the writ petition on 24.4.1998, despite very strong opposition by the learned counsel appearing for the respondent-Bank, had granted the interim relief in view of the peculiar facts and circumstances of the case. We deem it appropriate to reproduce the relevant observations in the order granting interim relief at the stage of admitting the writ petition. The relevant observations read thus:-

> "2. The respondent-The Maharashtra State Co-operative Agriculture and Rural Development Bank Limited - employed the petitioner initially as Clerk on 3.3.1962. On 1st April 1964 he was promoted as Assistant Accountant. He was further promoted as Office Superintendent on 5th December, 1977. That the petitioner was born on 31st December 1942 at Nipani in Belgaum district

of Karnataka State is amply supported by the Birth Certificate issued by the Nipani Municipality. The petitioner belongs to Washerman community and his parents were illiterate and ignorant. After the shifting of the family to Karad in Satara district, the petitioner's father gave an incorrct date of birth in a Primary School at Karad. Instead of 31st December,1942, which is the correct date of birth, the father gave the date of birth as 1st June 1940, which came to be recorded in the school register which was reflected in the school leaving certificate which was produced by the petitioner while getting the employment.

3. Admittedly, the respondent-Bank issued a circular dated 25th September 1990 under which the employees were notified that many employees have not submitted proof of their birth date. This is improper and if the employees do not file requisite certifications regarding their correct date of birth, they will be made to retire in according with the date of birth registered with the office and,thereafter, no complaint of whatever nature in that behalf shall be entertained. The circular also called upon the employees to submit certification regarding the birth date. Those who fail would be exposed to administrative action.

4. It is the case of the petitioner that in pursuance to the aforesaid circular, by letter dated 5.10.1990, the petitioner informed the District Branch of the respondent-Bank that his correct date of birth is 31.12.1942 and not 1.6.1940. However, as nothing was heard in the matter, the petitioner sent a reminder on 5.7.1996. It is extremely significant to notice that by letter dated 3.8. 1996 addressed to the petitioner, the District Branch Manager, District Branch, Satara informed the petitioner that after perusal of the document and evidence produced by the petitioner, the birth date recorded in the Bank's record as 1.6.1940 is corrected as 3.12.1942 and such correction is made in the Bank's record. However, after about ten months, i.e. on 29th May,1997, the petitioner was again informed by the said Branch Manager that the correction carried out in the birth date is cancelled and upon receipt of the directions from the Head Office, the matter of correcting the

> birth date would be reconsidered. The petitioner again wrote to the Managing Director and urged that the correction be maintained. The petitioner wrote several letters. Ultimately, by letter dated 9.2.1998 signed by the Branch Manager, the petitioner was informed that change in the birth date cannot be considered.
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> 5. We have deliberately referred to the facts in detail because it clearly shows that as to the correct date of birth which is evidenced by the birth certificate, there is hardly any effective challenge. Secondly, we find that in pursuance to the circular in 1990, the petitioner had immediately applied for correction of the date of birth.In other words, the petitioner did not wait till the time he was about to retire. In fact, the Branch Manager accepted the case of the petitioner and informed the petitioner that the date of birth has been corrected. In view of this special circumstances, we are of the opinion that the petitioner is entitled to interim relief in that we direct that the petitioner shall not be retired unless he completes the age of superannuation as per the rules on the basis that his date of birth is 31st December, 1942."

5. By virtue of the interim relief granted by this Court, the petitioner was continued to be in the service until his retirement. The petitioner completed the age of superannuation on 31.12.2000 as per the rules on the basis of 31.12.1942 as his date of birth. The respondent-Bank, however, had a doubt about genuineness of the birth extract submitted by the petitioner showing his birth date as 31.12.1942 and hence they carried further enquiry. During that enquiry it revealed that the birth date of the petitioner was recorded as 12.2.1940 in the original record of birth register in the register for city Municipal Council, Nipani. The

said certificate is on record which was received by the petitioner in January,1999. Even after receipt of the birth certificate on 22.1.1999, the respondent did not move this Court for vacating of the interim relief granted by this Court on 24.4.1998 and allowed the petitioner to continue to work until he completed the age of superannuation on the basis of 31.12.1942 as his date of birth. It is against this backdrop, Mr Gole, learned counsel for the petitioner fairly submitted that the writ petition has rendered infructuous. Mr Patankar, learned counsel for the respondent, however, opposed the submission made by Mr Gole and submitted that the petition cannot be disposed of as infructuous and the order directing the petitioner to pay back the wages received by him after attaining the age of superannuation on the basis of the original birth date on record, viz. 1.6.1940. In support of this contention, he placed reliance on the judgments of the Supreme Court in **Radha Kishun Vs. Union of India, 1997 (1) L.L.N.1030 and State of J & K Vs. Pirzada Ghulam Nabi (1998) 9 Supreme Court Cases 102.** At the outset, let us record that the judgments relied upon by the learned counsel for the respondent-Bank would not apply to the facts of the present case. In the present case, the petitioner was allowed to continue to be in service by virtue of the order passed by this Court which was

passed despite very strong opposition by the learned counsel appearing for the respondent-Bank. Moreover, the respondent did not make any effort whatsoever for either getting the interim relief vacated which was granted on 24.4.1998 or got the writ petition placed for final hearing before the Court. In fact, after getting the genuine birth certificate and knowing the correct date of birth of the petitioner on 22.1.1999, they allowed the petitioner to continue to be in service till he attained the age of superannuation on the basis of his date of birth as 31.12.1942. It is against this backdrop, the submission made by the learned counsel for the respondent must be rejected. The judgments relied upon by him are of no avail to the respondents. In the circumstances, we are satisfied that the writ petition has become infructuous. We cannot pass the order as prayed for, across the bar, for refund of salary paid to the petitioner. In the circumstances, this petition is disposed of as infructuous.

6. In so far as Writ Petition No.1526 of 2001 is concerned, it was filed by the petitioner Bank, which is the respondent in the first writ petition, against the order dated 1.12.2000 passed by the Industrial Court, Satara below Exhibit-U-2 in Complaint (ULP) No.68 of 2000. By that order, the petitioner-Bank was directed

not to inflict punishment in pursuance of the chargesheet dated 11.8.2000. The petitioner Bank was also directed not to withhold any legal dues of the respondent-Mahadeo Jadhav after his retirement, who is the petitioner in the first petition. The Complaint (ULP) No. 68 of 2000 was filed by Mahadeo Jadhav and the order impugned in the writ petition dated 1.12.2000 was passed below Exhibit-2. That application was filed under section 30/2 of MRTP & PULP Act, 1971. By that application Mahadeo Jadhav sought direction against the petitioner-Bank not to proceed with the departmental enquiry initiated in pursuance to the chargesheet dated 11.8.2000 and not to implement the punishment in pursuance thereof. Mr Sawant, learned counsel for the petitioner, fairly stated that under the Rules, the enquiry against the employee of the Bank cannot proceed after his retirement and hence this petition has also become infructuous as far as the enquiry against Mahadev Jadhav is concerned. However, he invited our attention to the order passed by this Court while admitting the writ petition on 2.4.2001 which reads thus:

> "1. Rule.
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> 2. However, considering that there is another petition which is pending before this Court being Writ Petition No.1570 of 1998 in respect of the very same subject matter, interim

> relief rejected. To be heard along with Writ Petition No.1570 of 1998.
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> 3. Considering the fact that even considering the birth date as given petitioner would have retired on 1st June, 1998, petitioners to pay to the respondent terminal benefits/retirement dues upto 31st May,1998. Dues between 1st June, 1998 and 31st December,2000 would be subject to the order in Writ Petition No.1570 of 1998. It is also made clear that the contention of the petitioners that they would be entitled to make recovery of the wages would be subject to the final decision in the petition. Terminal benefits to be paid within eight weeks from today."

He further submitted that in view of the aforesaid order, Mahadeo Jadhav is not entitled for terminal benefits/retirement dues between 1.6.1998 and 31.12.2000. Though the submission of Mr Sawant, prima facie, appears to be reasonable and correct in law, we do not wish to express any opinion since that is not the subject matter of the writ petition. It is open for the petitioner Bank to take appropriate decision in so far as terminal benefits and retirement dues between 1.6.1998 and 31.12.2000 in accordance with law and rules. Insofar as the recovery of wages for the aforesaid period is concerned, we have already negatived that contention in the first petition. At the cost of repetition, it may be once again noticed that the petitioner was continued to be in service by virtue of the orders passed by this Court and in fact he worked during the aforesaid period for the Bank. In the

circumstances, this petition is also disposed of as infructuous.

(V.G.PALSHIKAR, AG.C.J.)

(D.B.BHOSALE, J.)

HIGH COURT
CIVILI APPELLATE SIDE

1. WRIT PETITION NO.1570 OF 1998 &
2. WRIT PETITION NO.1526 OF 2001

Date of Judgment:

th December, 2005.

For approval and signature

THE HON'BLE THE ACTING CHIEF JUSTICE V.G.PALSHIKAR

THE HON'BLE MR.JUSTICE D.B.BHOSALE

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad or Goa offices?